

JOSEPH B. EATON.

[Laid on the table and ordered to be printed.]

MARCH 2, 1860.

Mr. PENDLETON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Joseph B. Eaton, submits the following report :

It appears from the petition and accompanying papers that the assistant commissary of subsistence of the battalion of mounted volunteers, commanded by Colonel Fremont, 1847, obtained supplies of various kinds for the use of said troops from different persons, and, in payment therefor, issued certificates or due bills for the proper amounts, taking, however, at the same time, a bill of particulars of the supplies, and endorsed thereon an absolute receipt as if the money had been actually paid.

The due bills or certificates are generally in the following form :

“Due to B. K. Thompson, for provisions furnished prisoners in prison and men in hospital from February 4, to February 19, 1847, the sum of ninety-six, (\$96 00.)

HENRY KING,
Commissary of Subsistence, California Battalion.”

Approved :

J. C. FREMONT,
Governor of California.”

[Endorsed,]

“Payable to James Stokes or his order.

B. K. THOMPSON.

Pay Joseph B. Eaton or order.

JAMES STOKES.

PUEBLA DE LOS ANGELOS, *February 20, 1847.”*

And the receipts endorsed at the foot of the bills of particulars are in this form :

“Received, Puebla de los Angeles, March 3, 1847, of Henry King,

commissary of subsistence, California battalion, United States forces, the sum of ninety-six dollars in full of the above account.

B. K. THOMPSON."

By the sixth section of the act of 31st of August, 1852, a board of officers was organized "to examine and report to Congress upon all such claims as may be presented for funds advanced and subsistence and supplies of all kinds furnished or taken for the use of said command, California battalion."

These claims were presented to this board, and were allowed, and were included in the gross sum of \$129,886²³/₁₀₀, appropriated by act of August 5, 1854, to the discharge of claims of that nature.

Upon presentation, however, to the War Department for payment, they were rejected, on the ground that Henry King, the commissary of subsistence, had filed the receipts above mentioned, and had been allowed the respective amounts in the settlement of his accounts.

While these claims were under consideration in the War Department, the final account between the estate of said King and the government was stated, showing a balance due said estate of about \$800; and some suspicion having been excited, the comptroller suspended it, and made inquiry of persons supposed to be conversant with the facts, "whether any money, and if so how much, was paid to said King or his attorney as due him for disbursements on receipts not actually paid."—(See letter of J. M. Brodhead, comptroller.) No information having been elicited which would justify a rejection of the account, it was allowed and paid.

The petitioner urges that he should be paid, because he received these due bills "in the ordinary course of trade," "believing that they would be paid on presentation at the proper department at Washington," and that he ought not to be affected by any payment to the estate of King, after the "government was fully apprised of the fact that the said King had been wrongfully credited with said sums of money."

This payment to the estate of King appears to have been made prior to the rejection of these claims by the War Department, and after abundant caution on the part of the proper officers in the examination and verification of his accounts. Inquiry was instituted to ascertain whether any credits had been improperly allowed, as are now alleged, or any false vouchers had been used, and without result. The vouchers were genuine, appeared to be regular, and were certainly entitled to credit with the department. No special or actual notice was given to the proper officer to withhold from the estate of King the amount of these certificates, nor any notice to any branch of the government, except that furnished by the presentation of these claims for payment to the officers charged with the disbursement of the appropriation of \$129,886 above mentioned. The committee does not think this sufficient to charge the government with the duty of withholding any portion of the amount allowed to the estate of King, and, in case of payment, to create a liability to the holders of these claims. The government is as clear of liability as if the payment to King's estate had been made prior to the presentation of these certificates.

If the original holder of the claims were presenting this petition, the obvious and sufficient answer would be, that by his own wrongful act in giving receipts for money when in fact he had not received it, he had enabled King to draw the money from the treasury, and had thus cut himself off from all title to payment.

Your committee is of the opinion that the present holder and petitioner stands in no better position than the party from whom the certificates originally came. They are not negotiable on their face, and are entitled to none of the immunities attaching to that class of commercial paper. On the contrary, both in form and character, they belong to the class which is not negotiable, and carries everywhere, and in whosoever hands, all the infirmities which at any time attached to it.

When Mr. Eaton received these certificates, by the rules of law applicable to the case he took them at his own risk; and he has not shown that the rule of law is not the rule of equity likewise.

The committee, therefore, reports adversely to the prayer of the petition, and asks to be discharged from its further consideration.

